SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE

TESTIMONY OF LINDA J. MORGAN
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ON REAUTHORIZATION

March 31, 1998

My name is Linda J. Morgan, Chairman of the Surface Transportation Board (Board). I am appearing on behalf of the Board at the request of the Subcommittee to discuss the reauthorization of the Board.

Background on the Board

As you know, on January 1, 1996, the Board was established pursuant to P.L. 104-88, the ICC Termination Act of 1995 (ICCTA). Consistent with the trend at that time toward less economic regulation of the surface transportation industry, the ICCTA eliminated the ICC and, with it, certain regulatory functions that it had administered. The ICCTA transferred to the Board core rail adjudicative functions and certain non-rail adjudicative functions previously performed by the ICC. Motor carrier licensing and certain other motor functions were transferred to the Federal Highway Administration within the Department of Transportation (DOT). Attached is a chart showing the roughly 70% reduction in resources made available to the Board from those at the ICC at the time of its termination (Attachment 1).

The Board is a three-member, bipartisan, decisionally independent adjudicatory body organizationally housed within DOT. The rail oversight conducted by the Board encompasses maximum rate reasonableness, car service and interchange, mergers and line acquisitions, line constructions and abandonments, and labor protection and arbitration matters. The important rail reforms of the Staggers Rail Act of 1980 (Staggers Act) are continued under the ICCTA. The jurisdiction of the Board also includes certain oversight of the intercity bus industry and pipeline

carriers; rate regulation involving non-contiguous domestic water transportation, household goods carriers, and collectively determined motor rates; and the disposition of motor carrier undercharge claims. The ICCTA empowers the Board, through its exemption authority, to promote deregulation administratively.

Reauthorization of the Board

Overview. The Board was authorized under the ICCTA through September 30, 1998, and thus its reauthorization is before Congress this year. The Board believes that it should be reauthorized for 5 years, but at least for 3 years, and at least at its existing staffing and budget levels.

Congress created the Board as an independent adjudicative body. There continues to be an important regulatory role for such a body with respect to surface transportation; the need for such a body is no less today than it was when the Board was established. The resources allocated to the Board should reflect the fact that the Board's responsibilities continue at the level they were when the Board was created. Given the critical nature of the responsibilities being implemented by the Board relative to an ever-changing transportation marketplace, the certainty and stability associated with continuing these functions in the same forum are paramount, and a multi-year reauthorization period is important to that end.

FY 1999 Budget Request and Outyear Authorization Numbers. Earlier this year, the Board submitted a budget request for FY 1999 of $16.190 million and 135 FTEs, essentially adjusting the FY 1998 level for inflation and pay raises. This request reflects the relatively constant workload that is expected and the statutory and regulatory deadlines associated with the resolution of the cases filed.

While I continue to believe that the original request appropriately represents the budget needed for Board operations, I recently submitted numbers on behalf of the Board that would implement the President's proposed budget of $16.0 million. The $16.0 million budget reflected a

compromise agreement among the Board, the Department of Transportation, and the Office of Management and Budget whereby the Board, in the spirit of cooperation, agreed to a slightly lower funding level for FY 1999. Attached to the Board's testimony is the Board's FY 1999 budget submission (Attachment 2).

With regard to outyear funding, the following are the authorization figures for a 5-year period, assuming outyear amounts at the FY 1999 staffing and funding level.

(1) $16,190,000 for fiscal year 1999;
(2) $16,642,000 for fiscal year 2000;
(3) $17,111,000 for fiscal year 2001;
(4) $17,594,000 for fiscal year 2002;
(5) $18,090,000 for fiscal year 2003.

S. 1802, legislation introduced by Senator McCain and cosponsored by Senators Hollings, Hutchison, Inouye, Lott, Ford, and Stevens, reauthorizes the Board for 3 years at these funding levels.

User Fees. Currently, the Board is funded through a combination of appropriations and offsetting collections. Specifically, for the current fiscal year, $13.853 million has been appropriated and $2 million is to come from user fee collections. The numbers recently submitted by the Board for FY 1999 reflect the same funding mix: $14 million in appropriations and $2 million for user fee collections. By contrast, the President's budget, while agreeing to an overall funding level of $16 million, proposes that the Board's entire budget be funded through user fees.

The Board's existing user fee collections are based on the Board's existing authority under Title V of the Independent Offices Appropriation Act of 1952 (IOAA), 65 Stat. 290, recodified at 31 U.S.C. 9701. This authority allows the Board to recover the specific costs of providing a specific service. Under this authority, fees are assessed for the various filings made at the Board, and for the provision to the general public upon request of certain financial transportation data and other information. To ascertain these specific costs, the Board must keep track of them on an ongoing basis and regularly reassess them to ensure their accuracy.

However, the Board is unable to recover all of its operating costs under its current user fee statutory authority. See National Cable Television Association v. United States, 415 U.S. 336 (1974); Federal Power Commission v. New England Power Company, 415 U.S. 345 (1974). Funding the Board for FY 1999 solely by user fees is feasible only if Congress acts expeditiously to pass legislation that the President would sign clearly expressing its intention that the total costs of administering all functions assigned to the Board by the ICCTA be recovered through user fees, and providing for the assessment of charges on those regulated by the Board. In expressing its intention, Congress would need to provide guidelines for those assessments. See Skinner v. Mid-America Pipeline Company, 490 U.S. 210 (1989). If such legislation providing guidelines for the new assessments were enacted no later than early June 1998, the Board could then provide the legally required public notice of and opportunity for comment on a revised fee schedule proposal in accordance with the enacted legislation and have the new fee schedule in place no earlier than October 1998.

The Board continues to believe that it must be adequately funded to carry out its mandate. In this regard, our position has been and continues to be that we support a financing mechanism of appropriations and offsetting collections until Congress provides new direction. If Congress decides to proceed with legislation that would require the Board to fully fund its operations through user fees, the Board is prepared to work with the appropriate Committees on the legislation necessary to direct, with the necessary legal authority, the Board to set up a fee program to fully fund the Board's activities through fees and assessments.

In this regard, in response to the Administration's proposal to fully fund the Board through user fees in its FY 1999 budget, the Board developed an options paper in early 1996 that identified and evaluated alternative user charge proposals for full funding of the Board through user fees. I have submitted a copy of the Board's 1996 options paper for the record (Attachment 3).

Workload of the Board

Overview. Since its inception, the Board has had pending in terms of caseload on average between 400 and 500 adjudications related to all of its functions. The number of rail cases pending at the Board at any time remains relatively constant because, even as cases are resolved, new cases are being filed. The cases have been, and continue to be, increasingly complex.

Because it is an adjudicative body, the Board believes that the best measurement of workload output is the number of decisions rendered, although such a measurement does not reflect all of the work product of the Board. Attached to my testimony is a chart indicating the pattern of decisions issued in the various work categories (Attachment 4).

Highlights of Accomplishments and Continuing Responsibilities. Also attached to my testimony is a summary of what the Board has accomplished over the last 2 years since its establishment on January 1, 1996 (Attachment 5). In this regard, the Board has submitted to Congress its first annual report covering FY 1996 (from the Board's inception on January 1, 1996) and FY 1997. Also, the attached budget submission highlights what has been accomplished in prior years and what is anticipated in the coming fiscal year.

Despite the fact that its resources were significantly reduced by more than 70% from those at the ICC at the time of its termination, the Board has accumulated an impressive record of accomplishments. It has timely met every rulemaking deadline set by Congress in the ICCTA, as reflected in the attached listing of those rulemakings (Attachment 6). It has significantly streamlined existing regulations, eliminating 29 parts of the Code of Federal Regulations in 19 rulemaking proceedings. It has set and met deadlines and established simplified procedures for handling pending cases. It has resolved close to 200 motor carrier undercharge cases, and now has currently less than 100 pending. It has made great strides in disposing of several old and difficult cases that had been pending at the ICC and were transferred to the Board, including several rail rate reasonableness cases. It has worked on several important rail restructuring cases, including several complex line construction cases, the Union Pacific/Southern Pacific merger, and the pending Conrail acquisition case (in which roughly 80 decisions have already been issued). It has worked on two complex matters dealing with Amtrak's use of freight lines. It has tackled the

rail service emergency in the West in a variety of unprecedented ways, including its issuance of an emergency service order on October 31, 1997, which has been extended and expanded upon twice and is in place through August 2, 1998.

The nature and scope of the workload is not likely to change substantially in the foreseeable future. In particular, the Board will continue to be challenged with rail restructuring matters, involving not only the large railroads but also the smaller ones, and rail rate and service complaints. With respect to non-rail matters, the Board anticipates the continued restructuring of the intercity bus industry and involvement in selected rate matters.

More Detailed Discussion of Board Decisions on Substantive Issues

Although virtually all of the Board's decisions address significant substantive issues, its actions in four areas of rail oversight ─ rate regulation; restructuring transactions, particularly mergers; service, particularly in the West; and labor matters ─ appear to have raised the most substantial interest. I will now address the Board's most important actions in each of those areas, after which I will briefly summarize some of the Board's responsibilities with respect to modes other than rail.

Rate Regulation

Rate Reasonableness Complaints: Market Dominance Threshold. The Board has jurisdiction to adjudicate complaints challenging the reasonableness of a railroad's common carriage rates only if the railroad has market dominance over the traffic involved. 49 U.S.C. 10701(c)-(d), 10704, 10707. Market dominance refers to "an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies." 49 U.S.C. 10707(a). Under 49 U.S.C. 10707(d)(1)(A), the Board cannot find that a carrier has market dominance over a movement if the rate charged results in a revenue-to-variable cost percentage that is less than 180%. If this ratio is over 180%, then the Board determines whether there is effective intramodal, intermodal, geographic or product competition. If there is not, then there is market dominance. Thus, in considering any rate reasonableness challenge, the first

finding that the Board makes is whether the defendant carrier has market dominance over the traffic involved.

Standard Guidelines for Assessing Rate Reasonableness. To assess whether rates are reasonable, the Board uses a concept known as "constrained market pricing" (CMP) whenever possible. See *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520 (1985), *aff'd sub nom. Consolidated Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987). CMP principles limit a carrier's rates to levels necessary for an efficient carrier to make a reasonable profit. CMP principles recognize that, in order to earn adequate revenues, railroads need the flexibility to price their services differentially by charging higher mark-ups on captive traffic, but the CMP guidelines impose constraints on a railroad's ability to price differentially.

The most commonly used CMP constraint is the "stand-alone cost" (SAC) test. Under the SAC test, a railroad may not charge a shipper more than it would cost to build and operate efficiently a hypothetical new railroad, tailored to serve a selected traffic group that includes the complainant's traffic. The Board used this test to resolve three rate complaints, and it is being used to evaluate the reasonableness of rates in several ongoing cases. Certain other rate complaint cases were settled.

Specific Rate Decisions. Specifically, in the West Texas Utilities Company decision served in May 1996, the Board, using the SAC test, found a Burlington Northern rate from a mine near Gillette, Wyoming, to a generating station in Vernon, Texas, to be unreasonably high, limited the rate that can be charged for that transportation in the future, and required payment of approximately $11 million in reparations for past shipments. The Board's decision, which was challenged by the railroad, was affirmed in court.

In the Arizona Public Service Commission decision served in July 1997, the Board, also using the SAC test, found that the rail rates charged by the Santa Fe for carrying coal from a mine near Gallup, New Mexico, to the Cholla electrical generating plant at Joseph City, Arizona, were unreasonably high. The Board ordered the railroad to reduce the rate by approximately 40% and to pay reparations of more than $25 million to the complaining shippers. The railroad has sought

administrative reconsideration of that decision. The Board expects to act on the railroad's request shortly.

In August 1997, in the McCarty Farms case, the Board evaluated rail rates charged by Burlington Northern for transporting export wheat and barley from Montana to ports in the Pacific Northwest. Based on the SAC test, which the parties asked it to use, the Board concluded that the rates had not been shown to be unreasonable and dismissed the complaint. The shippers have sought judicial review.

New Simplified Guidelines for Assessing Reasonableness. Although the CMP guidelines provide the most economically authoritative procedures for evaluating the reasonableness of rail rates, a rate challenge using CMP (particularly SAC) can be quite complex, detailed, and expensive to litigate. Thus, CMP can be impractical to use where the amount of money at issue is not great enough to justify the expense of such an evidentiary presentation. In the ICCTA, Congress directed the Board to develop a simplified, alternative procedure to CMP. 49 U.S.C. 10704(d). Accordingly, in December 1996, the Board adopted simplified guidelines that employ three revenue-to-variable cost benchmarks as starting points for a case-by-case reasonableness analysis, and subsequently adopted procedures for expediting those cases. The railroads have sought judicial review of these guidelines. No complaint cases have been filed by shippers seeking application of these guidelines, and the one pending case to which these guidelines would have been applicable has been settled by the parties.

Bottleneck Cases. In decisions served in December 1996 and April 1997, the Board established principles to govern the class of rail rate and service complaint cases known as " bottleneck" cases. Bottleneck cases arise where more than one railroad may be involved in providing service from one or more origins to a destination, but only one ─ the bottleneck carrier ─ can provide service for a particular portion of the movement.

In its decisions, the Board recognized that railroads under the law have the initial discretion under the law as to how to rate and route their traffic. Nevertheless, the Board found that shippers can obtain substantial relief in three different ways. First, in light of the common

carrier obligation of 49 U.S.C. 11101, a bottleneck carrier may not refuse to provide service to a shipper from a new origin that it does not serve; instead, under 49 U.S.C. 10742, it must accept traffic from the origin carrier at a reasonable interchange and provide a route and whatever rate is necessary to complete the transportation.

Second, under the "competitive access" provisions of 49 U.S.C. 10705, a shipper can obtain the prescription of a new through route from an origin that is served by a bottleneck carrier, if it shows that the carrier has used its market power in an inappropriate way, or that the service proposed by the shipper would in some way be more efficient, or "better," than the existing service.

Finally, the Board found that, notwithstanding prior precedent generally restricting rate reasonableness challenges to origin-to-destination rates, when the non-bottleneck segment of an established through route is covered by a rail/shipper contract over which the Board has no jurisdiction, the rate covering the bottleneck segment is challengeable separately. Both the railroads and shippers appealed the Board's decision, and this appeal was argued in November of last year. Currently, two cases separately challenging bottleneck-segment rates are pending before the Board.

Procedures For Expediting Rate Cases. In October 1996, as part of its commitment to expeditiously resolving its pending caseload, and its complaint cases in particular, the Board adopted new rules and procedures to speed the processing of rail rate complaints, including bottleneck cases. In part, the new regulations are designed to ensure that SAC cases, which often had taken years to resolve, will be completed within 16 months following the filing of a complaint. These regulations also include other time limits, the provision for discovery without involvement of the Board, simultaneous review of market dominance and rate reasonableness issues, and the continued processing of the merits of a case even when a motion to dismiss is pending. In January 1998, the Board issued final rules for determining within a certain time period whether CMP or the simplified procedures should be applied in any particular case.

Mergers

Overview. The Board has significant responsibility to oversee rail restructuring matters that involve larger railroads but also have a critical impact on the growth and sustainability of smaller railroads. This responsibility includes line sales, mergers and acquisitions, line constructions, and line abandonments. Mergers of Class I railroads have garnered much attention in this regard.

When two or more Class I rail carriers seek to consolidate through a merger or common control arrangement, they must obtain the prior approval of the Board under 49 U.S.C. 11323-25. See 49 CFR Part 1180. In assessing major merger transactions, the Board is directed by law to approve such a transaction that it finds is in the public interest. In determining whether a merger is in the public interest, the Board must consider at least (1) the effect of the merger on the adequacy of transportation to the public; (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction; (3) the total fixed charges that result from the proposed transaction; (4) the interest of rail carrier employees affected by the proposed transaction; and (5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system. 49 U.S.C. 11324.

The Board may, where warranted to alleviate anticompetitive effects, impose conditions upon its approval. In addition, by law the Board is required to impose labor protective conditions to alleviate harm to non-management employees who are adversely affected by the transaction. Also, as part of the decision-making process, the Board must consider the environmental effects of a proposed merger pursuant to the National Environmental Policy Act and related environmental laws, and as part of the approval of a merger, imposes conditions as appropriate to mitigate the potential environmental impacts resulting from the merger that are identified during the environmental review process. By law, the Board's approval of a merger exempts such a transaction from all other laws (including antitrust laws) to the extent necessary for the carriers to consummate the approved transaction. 49 U.S.C. 11321.

Specific Transactions. In August 1996, the Board approved, with significant conditions,

the acquisition of the Southern Pacific rail system by the Union Pacific rail system. This approval permitted the common control and eventual merger of the Union Pacific, Missouri Pacific, Southern Pacific, St. Louis Southwestern, SPCSL, and Denver and Rio Grande railroads into what is known as the "UP/SP" system. Because there was some overlap between the UP and the SP systems, some parties sought to require UP to give up some SP lines to other railroads to avoid competitive harm. Instead of requiring such "divestiture," however, which the Board strongly believed could have undermined the merger and left the ailing SP system with no hope of successfully serving shippers over the long term, the Board imposed a variety of conditions, which expanded upon and added to those suggested by shippers. One of the conditions attached to the Board's approval gave substantial operating rights to the Burlington Northern and Santa Fe railroad (BNSF) over the UP/SP system, thus ensuring that all shippers that were served by more than one railroad before the merger would continue to be served by more than one railroad after the merger. Another condition required Board oversight for 5 years, to examine whether additional remedial conditions would be required. Also, the Board provided for additional environmental review of traffic increases in Reno, Nevada, and Wichita, Kansas, resulting from the merger.

With respect to the UP/SP merger, in May 1997, the Board initiated the first annual oversight proceeding. In a decision issued in October of last year, the Board concluded that, while it was still too early to tell, no additional conditions were justified at that time. However, the Board indicated that it would continue vigilant monitoring.

On another matter, in July 1997, the Board accepted for consideration an application by the CSX, Norfolk Southern, and Conrail railroads for CSX and Norfolk Southern to acquire Conrail and divide its assets between them. The Board has also received related applications for ancillary construction projects and abandonments. To date, the Board has issued over 80 decisions in this matter, and will be producing an environmental impact statement on the transaction. The Board expects to issue a final decision on the entire matter by July 23, 1998.

The Service Emergency in the West

During the summer of 1997, service began to deteriorate on the UP/SP system, and by late summer/early fall, the congestion became extremely serious. The Board responded to the service emergency swiftly and decisively. It held oral hearings on October 27, and December 3, 1997, at which it received testimony over a 20-hour period from over 85 witnesses representing a broad spectrum of interests. In the Service Order No. 1518 proceeding instituted following the October 27 hearing, the Board has issued two unprecedented emergency service orders that, among other things, made substantial changes to the way in which service is provided in and around the Houston area (the center of the service problems). Essentially, the service orders, which extend until August 2, 1998, sought to relieve some of the pressure on rail service to Houston in general, and on UP/SP in particular, by routing traffic around Houston and by authorizing other carriers to handle UP/SP traffic moving through the area. They required extensive railroad data reporting to help the Board and affected parties evaluate the progress of the service recovery, and directed certain other activities with respect to the movement of grain and additional assistance from other railroads.

Although no party during the UP/SP merger proceeding suggested that the merger would cause an emergency of the sort that ultimately developed, the Board recognized that merger operational integration problems were a factor in the congestion that created the emergency. However, it concluded that one of the major causes of the service emergency was the inadequate railroad infrastructure in Houston, and that, at least on the basis of the record made to date, a key step in improving service in the Houston area is to upgrade the infrastructure. The Board directed UP/SP, other railroads, and other interested parties to meet to discuss ways to improve infrastructure in the Houston area, and to report back to the Board by May 1, 1998.

In taking action to address the rail service emergency in the West, the Board's objective has been to have a positive impact without creating harm. In this regard, the Board recognizes that government cannot run private businesses as well as private businesses can run themselves, and that government is not, and should not be, in the business of running railroads. Thus, our actions have been focused, balanced and constructive without undermining ongoing private sector

efforts to fix the problems, and without inadvertently degrading the service to some shippers to upgrade the service to others. In this regard, along with the major modifications to the service provided by UP and the other railroads serving the Southwest that the Board directed, its involvement has spawned important private-sector initiatives intended to resolve the service problems that have developed, including the recent agreement between UP/SP and BNSF to better coordinate service and facilities in the Houston area, and UP/SP's announced commitment to expend significantly more to upgrade infrastructure in the Gulf Coast area. Furthermore, the Board's directives regarding the infrastructure problem should produce much needed private-sector planning by affected railroads, shippers, and other interested parties. The situation in the West is not yet resolved, but the Board believes that it has been a positive force, imposing appropriate governmental mandates while promoting needed private-sector resolution. We are committed to remaining actively involved in this entire matter until we believe that service is satisfactorily improved.

Labor Matters

Railroad employees who are adversely affected by certain Board-authorized rail restructurings are entitled to statutorily-prescribed protective conditions, under 49 U.S.C. 11326(a) (consolidations of Class I or II carriers), 11326(b) (consolidations between Class II and III carriers), 10902(d) (line acquisitions by Class II carriers), or 10903(b)(2) (line abandonments). These standard conditions relate to both wage or salary protection and changes in work conditions. They provide for resolving disputes regarding implementation through arbitration, and arbitration awards are appealable to the Board under certain criteria. The Board has interpreted the statutory labor protection provisions cognizant of employee interests under the law in a variety of ways.

Procedural Protections for Employees of Class II Carriers. In April 1997, the Board resolved issues regarding procedural protections available to employees to be affected by a Class II carrier line acquisition. The railroad involved had argued that the only employees covered by certain new protections established in the ICCTA were employees who had actually lost their

jobs. The Board disagreed, and interpreted the statute to cover all affected employees and set forth procedures to be followed in implementing these new protections. This matter has been appealed by the carrier involved.

Advance Notice Requirement. In a rulemaking decision served in September 1997, the Board amended its procedures for processing proposed rail line purchases by Class II carriers, and by noncarriers and Class III carriers where the carrier will have revenues in excess of $5 million once the transaction is completed, to require 60 days' notice. This additional notice requirement will benefit both affected communities and employees who work on lines proposed to be transferred to a new owner or operator. The buyer must inform employees on the line to be sold of the types and number of jobs expected to be available after the transaction is consummated, the terms of employment, and the principles to be used for employee selection. This notice requirement is expected to ensure the smooth implementation of these transactions for all involved. This matter has been appealed by the smaller railroads.

Appeals of Arbitrator Decisions. The Board has reassessed the approach taken by the ICC to agency review of decisions by arbitrators implementing or adjudicating claims under labor protective conditions. The Board's current practice is to show strong deference to the decisions of the labor arbitrator, who is the person closest to the facts and who is experienced in labor relations.

Out of the 16 appeals of arbitral decisions addressed by the Board in the 2-year period following its creation, the Board has reviewed only 6 of the arbitration decisions. Of those 6 cases, the Board upheld the arbitrator, in whole or in part, in 3 of them, and, in another case, the Board vacated the decision on review when it became clear that the matter had become moot. The Board vacated the arbitral award in the other 2 cases.

A rare instance of Board action overturning even part of an award occurred in June 1997, when the Board reversed part of one arbitration decision, arising from the UP/SP merger, that required employees to change their health benefit provider. Because health benefits relate to vested and accrued fringe benefits, the Board found that these medical care programs were

preconsolidation rights, privileges, and benefits that could not be modified as part of the standard (*New York Dock*) implementing agreement process.

In 2 proceedings related to each other, the Board stayed a disruptive arbitral award on the basis of irreparable injury to employees who would have been required to change their residences in connection with a railroad financial transaction. After the Board stayed the effect of the award twice, the railroad and employees settled the case with no need for further Board action.

The Immunity Provision. Concerns have been raised regarding the overriding of laws and contracts as part of the Board's approval of railroad consolidations. This is particularly true for collective bargaining agreements. The courts have made clear, however, that the so-called immunity provision now appearing at section 11321(a) of the ICCTA is self-executing and operates automatically to override collective bargaining agreements to the extent "necessary" without any findings or action by the Board as long as the agency has properly approved the consolidation transaction. Thus, the Board itself does not abrogate or override existing collective bargaining agreements; rather, that is accomplished by act of law as interpreted by the courts.

Other Areas of Board Jurisdiction

Although the bulk of its resources are expended on railroad issues such as those described above, the Board has responsibilities in regulating other modes of transportation.

General Freight Trucking Regulation. With respect to the general freight trucking industry, in addition to its responsibility to decide truck rate undercharge cases, the Board has authority to authorize and monitor agreements between trucking companies for establishing through routes and joint rates, classifications and mileage guides, and certain other activities. Board approval confers immunity from the antitrust laws for these collective activities. 49 U.S.C. 13703(a)(6). Under 49 U.S.C. 13701, the Board may also review the reasonableness of rates and practices established collectively. The rate bureaus' antitrust immunity is set to expire by law at the end of 1998 under 49 U.S.C. 13703(d) and (e), unless it is continued by the Board. Given the repeal of the statutory tariff filing requirements for motor carriers, the Board is conducting proceedings to determine whether antitrust immunity should be continued for motor carriers of

general freight to set rates collectively, or for freight classification activities.

Household Goods Carriers. The ICCTA eliminated the requirement that household goods carriers file tariffs, but continued to require that their tariffs be published and made available to homeowners whose shipments are subject to the tariffs. 49 U.S.C. 13702(a), (c). In February 1997, the Board adopted regulations governing household goods carriers' tariffs, at 49 CFR Part 1310. The regulations require, in general, that household goods shippers be clearly informed of the services they will receive and the charges they will pay. In addition, as with the general freight trucking industry, the Board has authority over collective activities and the reasonableness of certain rates and practices.

Intercity Bus Industry. Intercity bus carriers require Board approval for mergers and similar consolidations, 49 U.S.C. 14303, and for pooling arrangements between carriers, 49 U.S.C. 14302. In addition, the Board can require bus carriers to provide through routes with other carriers, under 49 U.S.C. 13705. The Board has approved several consolidations within the bus industry intended to improve operational efficiency and promote the competitiveness of the industry.

Noncontiguous Domestic Trade. Before the ICCTA, the ICC regulated inland water carriage, while regulation of the noncontiguous domestic trade (service between mainland points and points in Alaska, Hawaii, or the U.S. territories and possessions such as Puerto Rico or Guam) was bifurcated: the ICC regulated joint water-motor or water-rail rates, while the Federal Maritime Commission regulated "port to port" transportation (transportation for which the inland and water carriers did not set their rates cooperatively). The ICCTA transferred all jurisdiction over noncontiguous domestic trade rates to the Board, requiring carriers to file tariffs, and giving the Board jurisdiction over the reasonableness of rates for service in the noncontiguous domestic trade. It established a zone of reasonableness (ZOR) for noncontiguous domestic trade rates; thus far, the Board has had no complaints, as most increases appear to remain within the ZOR.

Pipeline Rate Regulation. The Board regulates the rates charged for interstate pipeline transportation of commodities other than water, gas, and oil. 49 U.S.C. 15301, 15501, 15503,

15701. In October 1996, in a decision responding to a complaint filed against Chevron Pipe Line Company, the Board found that, at certain volume levels, the tariff rates filed by Chevron for the transportation of phosphate slurry from Vernal, Utah, to Rock Springs, Wyoming, were unreasonably high and had to be reduced. In response to a complaint filed against Koch Pipeline Company, the Board in May 1997 instituted an ongoing investigation into rates charged for pipeline movements of anhydrous ammonia from production facilities in southern Louisiana to several Midwestern States.

The Board's Challenge

Since its inception, I believe that the Board, pursuant to Congressional directive in eliminating the ICC, has been a model of doing more with less — of putting its limited resources to the most efficient use in handling its caseload expeditiously and resolving matters before it in an effective and responsible manner in accordance with the ICCTA. I also believe that the Board has approached its work with fairness, balancing the many varied and often conflicting interests under the statute in reaching its decisions on the record. While not everyone agrees with all of the decisions rendered by the Board since its creation, I believe nevertheless that the Board has compiled an impressive record of tackling complex issues and moving matters before it to resolution.

I know that some Members of this Committee have raised concerns that the Board has not done enough to more actively promote competition or ensure lower rates for captive shippers. I can only respond by saying that, for the rail sector, the ICCTA reaffirmed the statutory tenets of the Staggers Act, in essence directing the Board to continue the regulatory approach that had been followed in implementing the Staggers Act. In responding to Congress' directive, the Board has carefully considered the interests of shippers and other interested parties in implementing the statute.

In this regard, Chairman McCain and Subcommittee Chairman Hutchison have directed the Board to conduct hearings to further address issues related to railroad rates and service, and

whether changes in direction are needed. We have taken this responsibility seriously and have responded promptly and fully; we have initiated a proceeding, we have received volumes of written testimony, and we are holding 2 days of oral hearings later this week, at which time we will hear from over 50 witnesses. I welcome the opportunity to conduct these hearings on matters of critical importance to the future of rail transportation, and to review with this Committee the record that we compile.

I look forward to working with Congress and all interested parties to ensure that the Board carries out the law as intended, and the multi-year reauthorization of the Board with the provision of adequate resources is critical to that end. I would be happy to address any questions that you might have.